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09/932,096	08/20/2001	Donald L. Schmidt	00-034	5482

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SONYA C, HARRIS  
P.O. BOX 2607  
FAIRFAX, VA 22031

EXAMINER

VARNER, STEVE M

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/932,096

Applicant(s)

SCHMIDT, DONALD L. *ES*

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-20 is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan et al. '060 in view of Severino.

Regarding claim 1, Vaughan et al. '060 shows a first elongate plate (1450), a second elongate plate (1250) spaced apart from the first elongate plate, and a web (between 1250 and 1450) securing the first plate (1450) and the second plate (1250) in spaced apart relation. Vaughan et al. '060 shows the web forms a plurality of circumferentially closed openings (1210, 1220, 1230, 1330, 1320, 1310, 1430, 1420, 1410) arranged in at least two horizontal rows. Vaughan et al. '060 teaches each horizontal row includes at least two adjacent openings. (Fig. 15)

Vaughan et al. '060 does not show rounded openings. Severino shows rounded openings. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use rounded openings as in Severino in the structure of Vaughan et al. '060 to reinforce the corners.

Vaughan et al. '060 shows the web includes a plurality of vertically spaced apart spanning members (1660, 1650, 1630, 1620) extending from the first plate (1450) to the second plate (1250), including an uppermost spanning member (1660) and lowermost

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spanning member (1620) and the plates (1250, 1450) extend above and below the uppermost (1660) and lowermost (1620) spanning member wherein each spanning member comprises intersecting straps (1260, 1460) selectively orthogonally oriented relative to the spanning members. (Fig. 15)

Regarding claims 2, Vaughan et al. '060 shows one of the horizontal rows of openings includes at least two openings (1210, 1410) oriented such that the length of each one of the two openings extends horizontally. (Fig. 15)

Regarding claims 3, Vaughan et al. '060 shows a horizontal row of openings including at least three openings including a first outer opening (1210), a second outer opening (1410), and a central opening (1310), oriented such that their lengths are horizontal. (Fig. 15)

Regarding claims 4, Vaughan et al. '060 teaches a plurality of vertically spaced apart spanning members (1660, 1650, 1630, 1620) extending from the first plate (1250) to the second plate (1450) including an uppermost spanning member (1660) and a lowermost spanning member (1620), wherein each of the spanning members comprises intersecting straps selectively orthogonally oriented relative to one another. (Fig. 15)

Regarding claims 5, Vaughan et al. '060 shows the web including at least one brace connecting at least two of the spanning members (1260), wherein the brace comprises intersecting straps selectively orthogonally oriented relative to one another. (Fig. 15)

Regarding claims 6, Vaughan et al. '060 shows an upwardly open receptacle (1950) having width and a height greater than the width. (Fig. 15)

Regarding claim 7, Vaughan et al. '060 teaches the basic claimed structure. Vaughan et al. '060 does not teach the first outer opening and the second outer opening each having a height greater than that of the central opening. Severino teaches the first outer opening (30) and the second outer opening (30) having a height greater than that of the central opening. (Fig. 5) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use the higher first and second openings of Severino in the structure of Vaughan et al. '060 to let more of the insulating foam through the openings on the sides.

Regarding claim 8, Vaughan et al. '060 reveals the first outer opening (1230) and the second outer opening (1430) are bounded by a strap (1260, 1460) oriented with its width parallel to at least one of the first plate (1450) and the second plate (1250). (Fig. 15)

Regarding claims 9, 10, Vaughan et al. '060 shows one circumferentially closed opening (1200) located above the uppermost spanning member and the lowermost spanning member. (Fig. 15)

Regarding claim 11, Vaughan et al. '060 shows a first elongate plate (1450), a second elongate plate (1250) spaced apart from the first elongate plate, and a web (between 1250 and 1450) securing the first plate (1450) and the second plate (1250) in spaced apart relation. Vaughan et al. '060 shows the web forms a plurality of circumferentially closed openings (1210, 1220, 1230, 1330, 1320, 1310, 1430, 1420, 1410) arranged in at least two horizontal rows. Vaughan et al. '060 teaches each horizontal row includes at least two adjacent openings. (Fig. 15) Vaughan et al. '060

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teaches at least two openings (1210, 1410) in one horizontal row such that the length of each of the two openings extends horizontally.

Vaughan et al. '060 does not show a horizontal row with three openings wherein the first outer opening and the second outer opening each have a height greater than that of the central opening and bounded by a strap oriented with its width parallel to one of the first plate and second plate such that each one of their respective lengths extends horizontally. Severino shows a horizontal row with three openings wherein the first outer opening (30) and the second outer opening (30) each have a height greater than that of the central opening and bounded by a strap (32) oriented with its width parallel to one of the first plate (22) and second plate (22) such that each one of their respective lengths extends horizontally.

Vaughan et al. '060 shows the web includes a plurality of vertically spaced apart spanning members (1660, 1650, 1630, 1620) extending from the first plate (1450) to the second plate (1250), including an uppermost spanning member (1660) and lowermost spanning member (1620) and the plates (1250, 1450) extend above and below the uppermost (1660) and lowermost (1620) spanning member wherein each spanning member comprises intersecting straps (1260, 1460) selectively orthogonally oriented relative to the spanning members. (Fig. 15) Vaughan et al. '060 shows one brace (1260, 1460) connecting two of the spanning members. Vaughan et al. '060 shows an upwardly open receptacle (1950) having width and a height greater than the width. Vaughan et al. '060 shows one circumferentially closed opening located above the uppermost spanning member (1200). (Fig. 15)

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***Allowed Claims***

Claim 12-20 are allowed.

Claim 12 is allowed for the projections and notches in the insulating panel.

Claim 13-20 depend from claim 12 and are therefore allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young shows an insulating non-removable type concrete wall forming structure and device and system for attaching wall coverings thereto. Mensen shows a web member for concrete form walls. Cymbala et al. reveals an insulating concrete form system. Vaughan et al. '449 shows a concrete forming system with brace ties.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV  
May 7, 2003

A handwritten signature in black ink, appearing to be 'C. Friedman', written over the printed name.

Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600